

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY ISLAMABAD

INFO AMCONSUL LAHORE

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: DAWOOD HERCULES COOLEY LOAN 391 E 130

REF: A. STATE 93464

B. ISLAMABAD 3666

AS PER REQUEST IN REFTEL B WE ARE REPEATING LAHORE 5721

JUNE 26, 1968:

1. UNDER PROVISIONS OF STAMP ACT, 1899 AND REGISTRATION ACT, 1908, ALL LEGAL MORTGAGES OF THE TYPE ENVISAGED SUBJECT LOAN MUST BE REGISTERED TO BECOME EFFECTIVE SECURITY INSTRUMENTS. REGISTRATION FEE IS RS. 5/-PER 1000. IF MORTGAGE IS FOR FULL LOAN AMOUNT OF 67,600,000, FEE WOULD BE RS. 338,000. STAMP DUTY WHICH IS ADDITIONAL IS RS. 30 PER 1000V FOR MORTGAGE IN WHICH MORTGAGEE IS GIVEN RIGHT OF POSSESSION IN EVENT OF DEFAULT, AND RS. 15 PER 1000 FOR MORTGAGE IN WHICH THERE IS NO RIGHT OF POSSESSION BUT ONLY FOR RECOVERY FROM MORTGAGED PROPERTY PROCEEDS. IF AS WE ASSUME MORTGAGE

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DEED GIVES RIGHT OF POSSESSION, AND MORTGAGE COVERS

LOAN, STAMP DUTY WOULD BE SLIGHTLY OVER RS. 2 MILLION.

2. BELIEVE, ABSENT EXEMPTION, FEE AND DUTY PAYABLE IF
COOLEY LOAN MORTGAGE REGISTERED SEPARATELY, OR IF

REGISTERED JOINTLY WITH IBRD LOAN, STAMP ACT, 1899
PROVIDES IN RELEVANT PART:

QUOTE

WHERE, IN THE CASE OF ANY SALE, MORTGAGE, OR SETTLEMENT
SEVERAL INSTRUMENTS ARE EMPLOYED FOR COMPLETING THE
TRANSACTION, THE PRINCIPAL INSTRUMENT ONLY SHALL BE
CHARGEABLE WITH THE DUTY PRESCRIBED IN SCHEDULE 1 ...
END OF QUOTE

ALTHOUGH POSSIBLE ARGUMENT COULD BE DEVELOPED THAT
PROVISION PROVIDE EXCEPTION IN CASE JOINT REGISTRATION,
BETTER VIEW WOULD BE THAT PROVISION DOES NOT PROVIDE
WAY OUT. PROVISION APPEARS ADDRESSED TO SEVERAL
OVERLAPPING INSTRUMENTS, AND NOT TO RELATED AGREEMENTS
EACH SECURING A SEPARATE LOAN.

3. CHAPTER II A 9 OF STAMP ACT PROVIDES THAT GOP MAY
REDUCE OR REMIT STAMP DUTIES. AUTHORITY TO PROVIDE
EXEMPTION NOW RESTS REVENUE BOARD, GOVERNMENT WEST
PAKISTAN, TO WHOM FORMAL APPLICATION BY COMPANY FOR
EXEMPTION MUST BE MADE. BOARD POWER DISCRETIONARY
WITHOUT RIGHT OF APPEAL ALTHOUGH POSSIBLE OBTAIN HIGH
COURT REVIEW THROUGH WRIT JURISDICTION. EXEMPTIONS
GIVEN ON AD HOC BASIS, WITH NO DISCERNIBLE CRITERIA.
V SIZE OF PROJECT, TYPE OF LENDING AGENCY AND VAGUE
CONCEPT OF RELATIVE SIGNIFICANCE OF PROJECT TO
DEVELOPMENT EFFORT ARE FACTORS ACCORDED WEIGHT IN PAST.
CONSIDER IT PROBABLE THAT SOME EXEMPTION OBTAINABLE.
ARE PURSUING DISCUSSIONS WITH REVENUE BOARD INFORMALLY
WITHOUT REFERENCE FERTILIZER CASES AND WILL ADVISE
FURTHER.

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